

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Irina Vladimirovna Astafieva,

NO. C 06-04820 JW

Plaintiff,

v.

**ORDER GRANTING PLAINTIFF'S
PETITION FOR HEARING ON
NATURALIZATION APPLICATION
PURSUANT TO 8 U.S.C. § 1447(b)**

Alberto Gonzales, et al.,

Defendants.

Plaintiff Irina Vladimirovna Astafieva ("Plaintiff") brings this action for a declaratory judgment that she is entitled to be naturalized pursuant to 8 U.S.C. § 1421. Before the Court is Plaintiff's Petition for Hearing on Naturalization Application Pursuant to 8 U.S.C. § 1447(b). Based upon the papers submitted to date, the Court GRANTS Plaintiff's Petition for a hearing on her naturalization application.

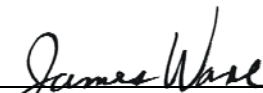
Plaintiff is a United States resident who resides within the Court's jurisdiction. (Petition for Hearing on Naturalization Application, hereafter "Petition," Docket Item No.1.) On September 5, 2003, Plaintiff filed an application for naturalization with the United States Citizenship and Immigration Services ("USCIS"). (Petition ¶ 28.) On May 6, 2004, she was examined on her application by a USCIS agent at the San Jose sub-office of USCIS's San Francisco District Office. (Petition ¶ 28.) She was informed that she passed the same day, but that a decision could not yet be made on her application. (Petition ¶ 6.) Since the date of her examination, Plaintiff and her supporters, including her congressional representative and present counsel, have made several inquiries as to the status of her application to no avail. (Petition ¶ 32-33). It has been over 22

1 months in excess of the 120 statutory grace period but still no decision has been made with respect
2 to Plaintiff's application. (Petition ¶ 35.)

3 Title 8 of the United States Code Section 1447(b) provides that if the government fails to
4 make a determination on an applicant's naturalization file within 120 days after it conducts an
5 examination, the applicant may apply to the United States District Court for the district in which the
6 applicant resides for a hearing on the matter. The majority of courts have interpreted the word
7 "examination" to mean the date of the examination with a USCIS officer, not the entire examination
8 process required prior to someone being naturalized. Daami v. Gonzales, 2006 U.S. Dist. LEXIS
9 37539 at *5 (D. N.J. May 22, 2006).

10 Plaintiff's examination occurred on May 6, 2004; the 120-day statutory period for Defendants
11 to make a determination on her application has expired. The Court GRANTS Plaintiff's Petition for
12 a hearing on her naturalization application. The hearing is set for **January 22, 2007 at 9 AM**. The
13 parties are to complete their briefings, if any, by January 8, 2007. In light this ORDER, the Court
14 vacates the case management conference presently set for November 27, 2006.

15
16 Dated: November 21, 2006



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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3 Christopher Anthony Kerosky ckerosky@youradwokat.com
4 Edward A. Olsen edward.olsen@usdoj.gov
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6 **Dated: November 21, 2006**

Richard W. Wieking, Clerk

7 **By: /s/ JW Chambers**
8 **Elizabeth Garcia**
9 **Courtroom Deputy**